Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-154

POTOMAC ELECTRIC POWER COMPANY, *Petitioner,*

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA, *Respondents.*

MEMORANDUM REPLY BRIEF OF PETITIONER POTOMAC ELECTRIC POWER COMPANY

EDWARD A. CAINE
LAWRENCE A. GOLLOMP
ALLEN C. BARRINGER
WILLIAM DANA SHAPIRO
1900 Pennsylvania Avenue, N.W.
Washington, D.C. 20068
(202) 872-2890

WILLIAM C. GARDNER
HOUSTON & GARDNER
615 F Street, N.W.
Washington, D.C. 20004
(202) 628-7058

Attorneys for
Potomac Electric Power Company

Washington, D.C.
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Petitioner, Potomac Electric Power Company (Pepco), respectfully submits the following memorandum reply to the Brief in Opposition of the People's Counsel of the District of Columbia (People's Counsel) filed with the Court on September 29, 1979.

ARGUMENT IN REPLY

Respondent, People's Counsel, repeatedly argues that consideration of Pepco's *systemwide* financial condition, rather than its *District of Columbia* financial condition, did not violate any constitutional prohibition and was within the Public Service Commission's authority in denying Pepco's application for emergency rate relief. (People's Counsel Brief in Opposition, pp. 4, 9, 10). This is ***precisely*** the recurring issue which

Pepco asked the District of Columbia Court of Appeals to address—and which the Court of Appeals unreasonably ignored—in dismissing, as moot, Pepco's appeal below.

The United States Court of Appeals for the District of Columbia Circuit has stated with respect to the District of Columbia Public Service Commission's use of systemwide financial results as the basis for approval of Pepco's rates that:

> "We must be able to say that the rates in the District are reasonable, just and nondiscriminatory as a part of, or in relation to, the system rates contained in the schedules of the Power Company for areas and services beyond the Commission's jurisdiction; *that is to say, that District consumers do not subsidize the non-District or indeed, vice versa.*" (Emphasis Added) *Capital Transit Co.* v. *Public Utilities Commn* 213 F.2d 176, 182 (D.C. Cir. 1954).[1]

The Public Service Commission unlawfully and unconstitutionally denied Pepco's request for an emergency interim rate increase because it relied on Pepco's more favorable non-District of Columbia financial results (instead of the Company's financial condition in the District of Columbia which clearly demonstrated the need for emergency rate relief) to justify its

[1] Prior to the District of Columbia Court Reform Act of 1973, appeals from the Public Service Commission were made to the federal courts in the District of Columbia.

decision. The District of Columbia Court of Appeals' refusal to hear the appeal of this decision on its merits denied Pepco any means of challenging the Commission's denial of emergency interim rate relief on the basis of a continuing standard which will lead to the same unconstitutional result in subsequent cases.

Respectfully submitted,

EDWARD A. CAINE
LAWRENCE A. GOLLOMP
ALLEN C. BARRINGER
WILLIAM DANA SHAPIRO
1900 Pennsylvania Avenue, N.W.
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(202) 872-2890

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HOUSTON & GARDNER
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